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Draft international convention for the suppression of the financing of terrorism

Working document submitted by France

Why an international convention against the financing of terrorism?

1. Combating the financing of terrorism, whether from "lawful" activities (relating to trade, industry or charity) or "unlawful" ones (relating to racketeering, drug trafficking, procuring, armed robbery and so on), constitutes a priority objective for agencies that are actively engaged in anti-terrorist operations. A terrorist group's ability to strike, acquire a powerful arsenal, make itself known, and recruit and train its members depends on its sources of funding.

2. Much remains to be done before the structure of international law will be complete. In particular, one major area has not been dealt with: there is as yet no international convention aimed at combating the financing of terrorism. The 11 existing international conventions do not provide investigators with adequate means of proceeding effectively against those who supply funds and those who sponsor terrorist attacks.

3. For that reason, at France's initiative, the General Assembly decided in December 1998 to undertake negotiations aimed at the conclusion of a new convention for the suppression of the financing of terrorism. France submitted an initial draft version of this convention on 3 November 1998 (document A/C.6/53/9). At the same time, we invited all our partners to engage in very broadly-based consultations on the text with a view to making improvements to it. Thanks to that concerted effort, France has recently submitted a second version (A/AC.252/L.7), replacing the original version submitted on 3 November 1998.

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The main features of the draft convention

4. *What is the meaning of "financing" under this convention (arts. 1 and 2)?* The definition of financing has been drafted so that it can be broadly interpreted: all means of financing are included within the scope of this convention, including both "unlawful" means (such as racketeering) and "lawful" means (such as private financing, public or semi-public financing, or financing provided by associations). At the same time, however, the convention is concerned only with the financing of actions of the most serious kind.

5. *Who are the persons at whom the convention is aimed (arts. 1, 2, 3, 5 and 7)?* This convention is aimed both at "those who give orders", who are aware of the use of the funds, and contributors, who are aware of the terrorist nature of the aims and objectives of the whole or part of the association which they support with their donations in cash or in kind; it is not aimed primarily at ordinary individuals. In any case, the moral aspect of the offence (*mens rea*) affords a means of excluding from the scope of the convention persons who make donations in good faith, such as those who respond to public appeals for funds. This convention provides for a regime of liability for legal entities based on:

- Establishment of the principle of the liability of legal entities as such,
- A flexible approach to that liability, which may be criminal, civil or administrative in nature, depending on the circumstances.

6. *What is the significance of the definition of an offence (art. 2)?* The definition of an offence has been drafted with a twofold aim: Article 2.1(a) is concerned expressly with the financing of acts within the scope of existing conventions. Clearly, since not all States are parties to all anti-terrorist conventions, this paragraph provides that the convention shall apply, for a State Party, only to offences within the scope of conventions that have been ratified by that State. Article 2.1(b) is concerned with the financing of murder, defined as an act designed to cause death or serious bodily injury. Acts of this kind are not covered by existing convention (except bombings, under the recent International Convention for the Suppression of Terrorist Bombings), yet they account for approximately 30 per cent of all acts of international terrorism.

7. *The "prosecute or extradite" principle for alleged offenders under the convention (arts. 10, 13 and 14).* Criminal proceedings must be initiated under the "prosecute or extradite" principle, which is the cornerstone of this convention. Supplementing this principle, the convention includes a preventive provision that has become standard and is designed to obviate requests for extradition or mutual assistance made for the purpose of punishing the person who is the subject of the request on account of that person's race, religion, ethnic origin and the like.

8. *The sanctions regime (arts. 4, 5 and 8).* The sanctions regime is designed to have a powerful deterrent effect: persons committing terrorist acts are subject to severe penalties. Furthermore, this draft convention also provides for the possibility of the seizure or freezing of property or assets used in committing the offence.

9. *An important measure for mutual legal assistance: the lifting of banking secrecy (art.12).* Although this convention is primarily concerned with prosecution, it gives a prominent place to mutual legal assistance. Important provisions are included: banking secrecy may not be claimed as grounds for denying assistance to investigators, and no offence may be regarded, for the purposes of extradition or mutual legal assistance, as a fiscal offence.

10. *Preventive measures based on generally accepted principles followed in combating money-laundering (art. 17).* All magistrates and police investigators who were consulted prior to and during the drafting of this convention emphasized one point in particular: it is very difficult to find evidence in financial cases. Consequently, this convention includes a number of provisions which are directly based on generally accepted principles followed in combating money-laundering, and which are designed to encourage States to adopt domestic measures to require financial institutions to improve the identification of their usual or occasional customers, notably by prohibiting the opening of anonymous accounts, formally identifying account holders, and preserving for at least five years the necessary documents in connection with the transactions carried out.